

AMENDED IN SENATE APRIL 10, 2014

AMENDED IN SENATE MARCH 5, 2014

SENATE BILL

No. 838

Introduced by Senator Beall
(Coauthor: Assembly Member Maienschein)

January 6, 2014

An act to add Section 290.1 to the Penal Code, and to amend Sections 676 and 707 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 838, as amended, Beall. Juveniles.

Existing law makes it an offense for a person to willfully threaten to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, and causes that person reasonably to be in fear for his or her own safety or for his or her immediate family's safety. Existing law makes it an offense for a person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in any area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.

~~This bill would make it an offense for a person who, with the intent to intimidate, embarrass, or harass another person, by means of an electronic communication device, and without consent of the other~~

~~person, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, a digital image of a sexual nature of another person, or shows or shares a photograph of the intimate body parts of that person, or an electronic message of a harassing nature about another person, which would be likely to intimidate, harass, or produce embarrassment. The bill would provide that the offense is punishable by imprisonment for up to one year in a county jail, by a fine of not more than \$1,000, or by both that fine and imprisonment. The bill would provide that if the material is of a sexual nature and identifies a minor, or shows intimate body parts, as defined, of the minor, the offense would be punishable by imprisonment in the state prison for 16 months, or 2 years or 3 years, or in a county jail for up to one year, or by a fine up to \$10,000, or by both the fine and imprisonment.~~

This bill would require additional penalties if a person convicted of specified sex offenses, who, with the intent to identify, intimidate, harass, humiliate, or bully the victim, uses social media, including, but not limited to, posting photos online or sharing cellular telephone photos of the incident that resulted in the conviction, or posting messages online or sharing cellular telephone messages pertaining to the incident that resulted in the conviction. The bill would provide for imposition of an additional year of incarceration, or a fine not exceeding \$10,000, or both, if the sex offense conviction was for a felony, and would provide for imposition of an additional fine not exceeding \$5,000 if the sex offense conviction was for a misdemeanor.

By creating ~~new~~ *enhancements for existing crimes*, this bill would impose a state-mandated local program.

Under existing law, as amended by Proposition 21, an initiative statute approved by the voters at the March 7, 2000, statewide primary election, juvenile court hearings are closed to the public, except for juvenile court hearings alleging the commission of specified felonies. The Legislature may amend Proposition 21 by a statute passed in each house by a $\frac{2}{3}$ vote.

This bill would add to that list of felonies, to which the public may be admitted for the hearing, certain sex offenses accomplished because the person is prevented from resisting *due to being rendered unconscious* by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of ~~mental disorder or developmental or physical~~ *a disability*, of giving consent, and this is known or reasonably should be known to the person committing the offense. The bill would also add to that list of felonies additional

specified sex offenses and a sexual offense where the offender used social media to identify, intimidate, harass, humiliate, or bully the victim.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Existing law, as amended by Proposition 21, enumerates certain crimes for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction.

This bill would add to that list of crimes, for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction, certain sex offenses accomplished because the person is prevented from resisting *due to being rendered unconscious* by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of ~~mental disorder or developmental or physical~~ a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense, and a sexual offense where the offender used social media to identify, intimidate, harass, humiliate, or bully the victim.

Because this bill would amend Proposition 21, it would require a $\frac{2}{3}$ vote.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 Audrie's Law.
3 SEC. 2. ~~Section 290.1 is added to the Penal Code, to read:~~
4 290.1. ~~(a) Every person who, with the intent to intimidate,~~
5 ~~embarrass, or harass another person, by means of an electronic~~
6 ~~communication device, and without consent of the other person,~~
7 ~~electronically distributes, publishes, e-mails, hyperlinks, or makes~~
8 ~~available for downloading, a digital image of a sexual nature of~~
9 ~~another person, or shows or shares a photograph of the intimate~~
10 ~~body parts of that person, or an electronic message of a harassing~~

1 nature about another person, which would be likely to intimidate,
2 harass, or produce embarrassment, is guilty of a misdemeanor
3 punishable by up to one year in a county jail, by a fine of not more
4 than one thousand dollars (\$1,000), or by both that fine and
5 imprisonment.

6 (b) ~~Every person who engages in behavior described in~~
7 ~~subdivision (a), and the material distributed identifies a minor and~~
8 ~~is of a sexual nature, or shows the intimate body parts of a minor,~~
9 ~~is guilty of a felony and shall be punished by imprisonment in the~~
10 ~~state prison for 16 months, or two years or three years, or in a~~
11 ~~county jail for not exceeding one year, or by a fine not exceeding~~
12 ~~ten thousand dollars (\$10,000), or by both the fine and~~
13 ~~imprisonment.~~

14 (c) For purposes of this section, the following definitions apply:

15 (1) ~~“Electronic communication device” includes, but is not~~
16 ~~limited to, telephones, cell phones, smart phones, computers,~~
17 ~~Internet Web pages or sites, Internet phones, hybrid~~
18 ~~cellular-Internet-wireless devices, personal digital assistants~~
19 ~~(PDAs), video recorders, fax machines, or pagers.~~

20 (2) ~~“Electronic communication” has the same meaning as the~~
21 ~~term is defined in Section 2510(12) of Title 18 of the United States~~
22 ~~Code.~~

23 (3) ~~“Harass” means to knowingly and willfully engage in~~
24 ~~conduct directed at a specific person that a reasonable person would~~
25 ~~consider as seriously alarming, seriously annoying, seriously~~
26 ~~tormenting, or seriously terrorizing the person and that serves no~~
27 ~~legitimate purpose.~~

28 (4) ~~“Of a harassing nature” means of a nature that a reasonable~~
29 ~~person would consider as seriously alarming, seriously annoying,~~
30 ~~seriously tormenting, or seriously terrorizing of the person and~~
31 ~~that serves no legitimate purpose.~~

32 (5) ~~“Intimate body parts” means the breasts, genital area, groin,~~
33 ~~inner thighs, and buttocks.~~

34 *SEC. 2. Section 290.1 is added to the Penal Code, to read:*

35 *290.1. (a) A person convicted of a sex offense listed in*
36 *subdivision (c) of Section 290 who, with the intent to identify,*
37 *intimidate, harass, humiliate, or bully the victim, uses social media,*
38 *including, but not limited to, posting photos online or sharing*
39 *cellular telephone photos of the incident that resulted in the*
40 *conviction or posting messages online or sharing cellular telephone*

1 *messages pertaining to the incident shall, in addition to any other*
 2 *punishment imposed for that conviction, be punished by an*
 3 *additional term of incarceration or additional fine pursuant to*
 4 *subdivision (b).*

5 *(b) (1) If the conviction for the offense listed in subdivision (c)*
 6 *of Section 290 is for a felony, the offender shall be punished by an*
 7 *additional consecutive year in prison, or by a fine not exceeding*
 8 *ten thousand dollars (\$10,000), or by both imprisonment and that*
 9 *fine.*

10 *(2) If the conviction for the offense listed in subdivision (c) of*
 11 *Section 290 is for a misdemeanor, the offender shall be punished*
 12 *by an additional fine not exceeding five thousand dollars (\$5,000).*

13 SEC. 3. Section 676 of the Welfare and Institutions Code is
 14 amended to read:

15 676. (a) Unless requested by the minor concerning whom the
 16 petition has been filed and any parent or guardian present, the
 17 public shall not be admitted to a juvenile court hearing. Nothing
 18 in this section shall preclude the attendance of up to two family
 19 members of a prosecuting witness for the support of that witness,
 20 as authorized by Section 868.5 of the Penal Code. The judge or
 21 referee may nevertheless admit those persons he or she deems to
 22 have a direct and legitimate interest in the particular case or the
 23 work of the court. However, except as provided in subdivision (b),
 24 members of the public shall be admitted, on the same basis as they
 25 may be admitted to trials in a court of criminal jurisdiction, to
 26 hearings concerning petitions filed pursuant to Section 602 alleging
 27 that a minor is a person described in Section 602 by reason of the
 28 violation of any one of the following offenses:

- 29 (1) Murder.
- 30 (2) Arson of an inhabited building.
- 31 (3) Robbery while armed with a dangerous or deadly weapon.
- 32 (4) Rape with force or violence, threat of great bodily harm, or
- 33 when the person is prevented from resisting *due to being rendered*
- 34 *unconscious* by any intoxicating, anesthetizing, or controlled
- 35 substance, or when the victim is at the time incapable, because of
- 36 ~~mental disorder or developmental or physical~~ a disability, of giving
- 37 consent, and this is known or reasonably should be known to the
- 38 person committing the offense.

- 39 (5) Sodomy by force, violence, duress, menace, threat of great
- 40 bodily harm, or when the person is prevented from resisting *due*

1 *to being rendered unconscious* by any intoxicating, anesthetizing,
2 or controlled substance, or when the victim is at the time incapable,
3 because of ~~mental disorder or developmental or physical~~ *a*
4 disability, of giving consent, and this is known or reasonably should
5 be known to the person committing the offense.

6 (6) Oral copulation by force, violence, duress, menace, threat
7 of great bodily harm, or when the person is prevented from resisting
8 *due to being rendered unconscious* by any intoxicating,
9 anesthetizing, or controlled substance, or when the victim is at the
10 time incapable, because of ~~mental disorder or developmental or~~
11 ~~physical~~ *a* disability, of giving consent, and this is known or
12 reasonably should be known to the person committing the offense.

13 (7) Any offense specified in subdivision (a) or (e) of Section
14 289 of the Penal Code.

15 (8) Kidnapping for ransom.

16 (9) Kidnapping for purpose of robbery.

17 (10) Kidnapping with bodily harm.

18 (11) Assault with intent to murder or attempted murder.

19 (12) Assault with a firearm or destructive device.

20 (13) Assault by any means of force likely to produce great bodily
21 injury.

22 (14) Discharge of a firearm into an inhabited dwelling or
23 occupied building.

24 (15) Any offense described in Section 1203.09 of the Penal
25 Code.

26 (16) Any offense described in Section 12022.5 or 12022.53 of
27 the Penal Code.

28 (17) Any felony offense in which a minor personally used a
29 weapon described in any provision listed in Section 16590 of the
30 Penal Code.

31 (18) Burglary of an inhabited dwelling house or trailer coach,
32 as defined in Section 635 of the Vehicle Code, or the inhabited
33 portion of any other building, if the minor previously has been
34 adjudged a ward of the court by reason of the commission of any
35 offense listed in this section, including an offense listed in this
36 paragraph.

37 (19) Any felony offense described in Section 136.1 or 137 of
38 the Penal Code.

1 (20) Any offense as specified in Sections 11351, 11351.5,
2 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and
3 Safety Code.

4 (21) Criminal street gang activity which constitutes a felony
5 pursuant to Section 186.22 of the Penal Code.

6 (22) Manslaughter as specified in Section 192 of the Penal Code.

7 (23) Driveby shooting or discharge of a weapon from or at a
8 motor vehicle as specified in Sections 246, 247, and 26100 of the
9 Penal Code.

10 (24) Any crime committed with an assault weapon, as defined
11 in Section 30510 of the Penal Code, including possession of an
12 assault weapon as specified in Section 30605 of the Penal Code.

13 (25) Carjacking, while armed with a dangerous or deadly
14 weapon.

15 (26) Kidnapping, in violation of Section 209.5 of the Penal
16 Code.

17 (27) Torture, as described in Sections 206 and 206.1 of the Penal
18 Code.

19 (28) Aggravated mayhem, in violation of Section 205 of the
20 Penal Code.

21 (29) Any offense specified in subdivision (c) of Section 290.

22 (30) Any sex offense in which the offender uses social media,
23 including, but not limited to, posting online photos and messages
24 or sharing cellular photos or messages of the incident, to identify,
25 intimidate, harass, humiliate, or bully the victim.

26 (b) Where the petition filed alleges that the minor is a person
27 described in Section 602 by reason of the commission of rape with
28 force or violence or great bodily harm; sodomy by force, violence,
29 duress, menace, threat of great bodily harm, or when the person
30 is prevented from resisting by any intoxicating, anesthetizing, or
31 controlled substance, or when the victim is at the time incapable,
32 because of mental disorder or developmental or physical disability,
33 of giving consent, and this is known or reasonably should be known
34 to the person committing the offense; oral copulation by force,
35 violence, duress, menace, threat of great bodily harm, or when the
36 person is prevented from resisting by any intoxicating,
37 anesthetizing, or controlled substance, or when the victim is at the
38 time incapable, because of mental disorder or developmental or
39 physical disability, of giving consent, and this is known or
40 reasonably should be known to the person committing the offense;

1 any offense specified in Section 289 or subdivision (c) of Section
2 290 of the Penal Code, or when the victim of a sexual offense is
3 then identified, intimidated, harassed, humiliated, or bullied
4 through social media, the use of smart phone photographs, or text
5 messaging, members of the public shall not be admitted to the
6 hearing in either of the following instances:

7 (1) Upon a motion for a closed hearing by the district attorney,
8 who shall make the motion if so requested by the victim.

9 (2) During the victim's testimony, if, at the time of the offense
10 the victim was under 16 years of age.

11 (c) The name of a minor found to have committed one of the
12 offenses listed in subdivision (a) shall not be confidential, unless
13 the court, for good cause, so orders. As used in this subdivision,
14 "good cause" shall be limited to protecting the personal safety of
15 the minor, a victim, or a member of the public. The court shall
16 make a written finding, on the record, explaining why good cause
17 exists to make the name of the minor confidential.

18 (d) Notwithstanding Sections 827 and 828 and subject to
19 subdivisions (e) and (f), when a petition is sustained for any offense
20 listed in subdivision (a), the charging petition, the minutes of the
21 proceeding, and the orders of adjudication and disposition of the
22 court that are contained in the court file shall be available for public
23 inspection. Nothing in this subdivision shall be construed to
24 authorize public access to any other documents in the court file.

25 (e) The probation officer or any party may petition the juvenile
26 court to prohibit disclosure to the public of any file or record. The
27 juvenile court shall prohibit the disclosure if it appears that the
28 harm to the minor, victims, witnesses, or public from the public
29 disclosure outweighs the benefit of public knowledge. However,
30 the court shall not prohibit disclosure for the benefit of the minor
31 unless the court makes a written finding that the reason for the
32 prohibition is to protect the safety of the minor.

33 (f) Nothing in this section shall be applied to limit the disclosure
34 of information as otherwise provided for by law.

35 (g) The juvenile court shall for each day that the court is in
36 session, post in a conspicuous place which is accessible to the
37 general public, a written list of hearings that are open to the general
38 public pursuant to this section, the location of those hearings, and
39 the time when the hearings will be held.

SEC. 4. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in subdivision (a) of Section 602 by reason of the violation, when he or she was 16 years of age or older, of any criminal statute or ordinance except those listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the following criteria:

- (A) The degree of criminal sophistication exhibited by the minor.
- (B) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.
- (C) The minor's previous delinquent history.
- (D) Success of previous attempts by the juvenile court to rehabilitate the minor.
- (E) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth above, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.

(2) (A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:

1 (i) The minor has previously been found to have committed two
2 or more felony offenses.

3 (ii) The offenses upon which the prior petition or petitions were
4 based were committed when the minor had attained 14 years of
5 age.

6 (B) Upon motion of the petitioner made prior to the attachment
7 of jeopardy the court shall cause the probation officer to investigate
8 and submit a report on the behavioral patterns and social history
9 of the minor being considered for a determination of unfitness.
10 Following submission and consideration of the report, and of any
11 other relevant evidence that the petitioner or the minor may wish
12 to submit, the minor shall be presumed to be not a fit and proper
13 subject to be dealt with under the juvenile court law unless the
14 juvenile court concludes, based upon evidence, which evidence
15 may be of extenuating or mitigating circumstances, that the minor
16 would be amenable to the care, treatment, and training program
17 available through the facilities of the juvenile court based upon an
18 evaluation of the following criteria:

19 (i) The degree of criminal sophistication exhibited by the minor.

20 (ii) Whether the minor can be rehabilitated prior to the expiration
21 of the juvenile court's jurisdiction.

22 (iii) The minor's previous delinquent history.

23 (iv) Success of previous attempts by the juvenile court to
24 rehabilitate the minor.

25 (v) The circumstances and gravity of the offense alleged in the
26 petition to have been committed by the minor.

27 A determination that the minor is a fit and proper subject to be
28 dealt with under the juvenile court law shall be based on a finding
29 of amenability after consideration of the criteria set forth above,
30 and findings therefore recited in the order as to each of the above
31 criteria that the minor is fit and proper under each and every one
32 of the above criteria. In making a finding of fitness, the court may
33 consider extenuating and mitigating circumstances in evaluating
34 each of the above criteria. In any case in which the hearing has
35 been noticed pursuant to this section, the court shall postpone the
36 taking of a plea to the petition until the conclusion of the fitness
37 hearing and no plea which may have been entered already shall
38 constitute evidence at the hearing. If the minor is found to be a fit
39 and proper subject to be dealt with under the juvenile court law
40 pursuant to this subdivision, the minor shall be committed to

1 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
2 or secure juvenile home pursuant to Section 730, or in any
3 institution operated by the Department of Corrections and
4 Rehabilitation, Division of Juvenile Facilities.

5 (3) If, pursuant to this subdivision, the minor is found to be not
6 a fit and proper subject for juvenile court treatment and is tried in
7 a court of criminal jurisdiction and found guilty by the trier of fact,
8 the judge may commit the minor to the Department of Corrections
9 and Rehabilitation, Division of Juvenile Facilities, in lieu of
10 sentencing the minor to the state prison, unless the limitations
11 specified in Section 1732.6 apply.

12 (b) Subdivision (c) shall be applicable in any case in which a
13 minor is alleged to be a person described in Section 602 by reason
14 of the violation of one of the following offenses:

15 (1) Murder.

16 (2) Arson, as provided in subdivision (a) or (b) of Section 451
17 of the Penal Code.

18 (3) Robbery.

19 (4) Rape with force, violence, threat of great bodily harm, or
20 when the person is prevented from resisting *due to being rendered*
21 *unconscious* by any intoxicating, anesthetizing, or controlled
22 substance, or when the victim is at the time incapable, because of
23 ~~mental disorder or developmental or physical~~ a disability, of giving
24 consent, and this is known or reasonably should be known to the
25 person committing the offense.

26 (5) Sodomy by force, violence, duress, menace, threat of great
27 bodily harm, or when the person is prevented from resisting *due*
28 *to being rendered unconscious* by any intoxicating, anesthetizing,
29 or controlled substance, or when the victim is at the time incapable,
30 because of ~~mental disorder or developmental or physical~~ a
31 disability, of giving consent, and this is known or reasonably should
32 be known to the person committing the offense.

33 (6) A lewd or lascivious act as provided in subdivision (b) of
34 Section 288 of the Penal Code, or when the person is prevented
35 from resisting *due to being rendered unconscious* by any
36 intoxicating, anesthetizing, or controlled substance, or when the
37 victim is at the time incapable, because of ~~mental disorder or~~
38 ~~developmental or physical~~ a disability, of giving consent, and this
39 is known or reasonably should be known to the person committing
40 the offense.

- 1 (7) Oral copulation by force, violence, duress, menace, threat
2 of great bodily harm, or when the person is prevented from resisting
3 *due to being rendered unconscious* by any intoxicating,
4 anesthetizing, or controlled substance, or when the victim is at the
5 time incapable, because of ~~mental disorder or developmental or~~
6 ~~physical~~ a disability, of giving consent, and this is known or
7 reasonably should be known to the person committing the offense.
- 8 (8) An offense specified in subdivision (a) or (e) of Section 289
9 of the Penal Code.
- 10 (9) Kidnapping for ransom.
- 11 (10) Kidnapping for purposes of robbery.
- 12 (11) Kidnapping with bodily harm.
- 13 (12) Attempted murder.
- 14 (13) Assault with a firearm or destructive device.
- 15 (14) Assault by any means of force likely to produce great bodily
16 injury.
- 17 (15) Discharge of a firearm into an inhabited or occupied
18 building.
- 19 (16) An offense described in Section 1203.09 of the Penal Code.
- 20 (17) An offense described in Section 12022.5 or 12022.53 of
21 the Penal Code.
- 22 (18) A felony offense in which the minor personally used a
23 weapon described in any provision listed in Section 16590 of the
24 Penal Code.
- 25 (19) A felony offense described in Section 136.1 or 137 of the
26 Penal Code.
- 27 (20) Manufacturing, compounding, or selling one-half ounce
28 or more of a salt or solution of a controlled substance specified in
29 subdivision (e) of Section 11055 of the Health and Safety Code.
- 30 (21) A violent felony, as defined in subdivision (c) of Section
31 667.5 of the Penal Code, which also would constitute a felony
32 violation of subdivision (b) of Section 186.22 of the Penal Code.
- 33 (22) Escape, by the use of force or violence, from a county
34 juvenile hall, home, ranch, camp, or forestry camp in violation of
35 subdivision (b) of Section 871 if great bodily injury is intentionally
36 inflicted upon an employee of the juvenile facility during the
37 commission of the escape.
- 38 (23) Torture as described in Sections 206 and 206.1 of the Penal
39 Code.

1 (24) Aggravated mayhem, as described in Section 205 of the
2 Penal Code.

3 (25) Carjacking, as described in Section 215 of the Penal Code,
4 while armed with a dangerous or deadly weapon.

5 (26) Kidnapping for purposes of sexual assault, as punishable
6 in subdivision (b) of Section 209 of the Penal Code.

7 (27) Kidnapping as punishable in Section 209.5 of the Penal
8 Code.

9 (28) The offense described in subdivision (c) of Section 26100
10 of the Penal Code.

11 (29) The offense described in Section 18745 of the Penal Code.

12 (30) Voluntary manslaughter, as described in subdivision (a)
13 of Section 192 of the Penal Code.

14 (31) Any sex offense in which the offender uses social media,
15 including, but not limited to, posting online photos and messages
16 or sharing cellular photos or messages of the incident, to identify,
17 intimidate, harass, humiliate, or bully the victim.

18 (c) With regard to a minor alleged to be a person described in
19 Section 602 by reason of the violation, when he or she was 14
20 years of age or older, of any of the offenses listed in subdivision
21 (b), upon motion of the petitioner made prior to the attachment of
22 jeopardy the court shall cause the probation officer to investigate
23 and submit a report on the behavioral patterns and social history
24 of the minor being considered for a determination of unfitness.
25 Following submission and consideration of the report, and of any
26 other relevant evidence that the petitioner or the minor may wish
27 to submit, the minor shall be presumed to be not a fit and proper
28 subject to be dealt with under the juvenile court law unless the
29 juvenile court concludes, based upon evidence, which evidence
30 may be of extenuating or mitigating circumstances, that the minor
31 would be amenable to the care, treatment, and training program
32 available through the facilities of the juvenile court based upon an
33 evaluation of each of the following criteria:

34 (1) The degree of criminal sophistication exhibited by the minor.

35 (2) Whether the minor can be rehabilitated prior to the expiration
36 of the juvenile court's jurisdiction.

37 (3) The minor's previous delinquent history.

38 (4) Success of previous attempts by the juvenile court to
39 rehabilitate the minor.

1 (5) The circumstances and gravity of the offenses alleged in the
2 petition to have been committed by the minor.

3 A determination that the minor is a fit and proper subject to be
4 dealt with under the juvenile court law shall be based on a finding
5 of amenability after consideration of the criteria set forth above,
6 and findings therefore recited in the order as to each of the above
7 criteria that the minor is fit and proper under each and every one
8 of the above criteria. In making a finding of fitness, the court may
9 consider extenuating or mitigating circumstances in evaluating
10 each of the above criteria. In any case in which a hearing has been
11 noticed pursuant to this section, the court shall postpone the taking
12 of a plea to the petition until the conclusion of the fitness hearing
13 and no plea which may have been entered already shall constitute
14 evidence at the hearing. If, pursuant to this subdivision, the minor
15 is found to be not a fit and proper subject for juvenile court
16 treatment and is tried in a court of criminal jurisdiction and found
17 guilty by the trier of fact, the judge may commit the minor to the
18 Department of Corrections and Rehabilitation, Division of Juvenile
19 Facilities, in lieu of sentencing the minor to the state prison, unless
20 the limitations specified in Section 1732.6 apply.

21 (d) (1) Except as provided in subdivision (b) of Section 602,
22 the district attorney or other appropriate prosecuting officer may
23 file an accusatory pleading in a court of criminal jurisdiction
24 against any minor 16 years of age or older who is accused of
25 committing an offense enumerated in subdivision (b).

26 (2) Except as provided in subdivision (b) of Section 602, the
27 district attorney or other appropriate prosecuting officer may file
28 an accusatory pleading against a minor 14 years of age or older in
29 a court of criminal jurisdiction in any case in which any one or
30 more of the following circumstances apply:

31 (A) The minor is alleged to have committed an offense that if
32 committed by an adult would be punishable by death or
33 imprisonment in the state prison for life.

34 (B) The minor is alleged to have personally used a firearm
35 during the commission or attempted commission of a felony, as
36 described in Section 12022.5 or 12022.53 of the Penal Code.

37 (C) The minor is alleged to have committed an offense listed
38 in subdivision (b) in which any one or more of the following
39 circumstances apply:

1 (i) The minor has previously been found to be a person described
2 in Section 602 by reason of the commission of an offense listed
3 in subdivision (b).

4 (ii) The offense was committed for the benefit of, at the direction
5 of, or in association with any criminal street gang, as defined in
6 subdivision (f) of Section 186.22 of the Penal Code, with the
7 specific intent to promote, further, or assist in criminal conduct by
8 gang members.

9 (iii) The offense was committed for the purpose of intimidating
10 or interfering with any other person's free exercise or enjoyment
11 of a right secured to him or her by the Constitution or laws of this
12 state or by the Constitution or laws of the United States and because
13 of the other person's race, color, religion, ancestry, national origin,
14 disability, gender, or sexual orientation, or because the minor
15 perceives that the other person has one or more of those
16 characteristics, as described in Title 11.6 (commencing with
17 Section 422.55) of Part 1 of the Penal Code.

18 (iv) The victim of the offense was 65 years of age or older, or
19 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
20 or confined to a wheelchair, and that disability was known or
21 reasonably should have been known to the minor at the time of
22 the commission of the offense.

23 (3) Except as provided in subdivision (b) of Section 602, the
24 district attorney or other appropriate prosecuting officer may file
25 an accusatory pleading in a court of criminal jurisdiction against
26 any minor 16 years of age or older who is accused of committing
27 one or more of the following offenses, if the minor has previously
28 been found to be a person described in Section 602 by reason of
29 the violation of a felony offense, when he or she was 14 years of
30 age or older:

31 (A) A felony offense in which it is alleged that the victim of the
32 offense was 65 years of age or older, or blind, deaf, quadriplegic,
33 paraplegic, developmentally disabled, or confined to a wheelchair,
34 and that disability was known or reasonably should have been
35 known to the minor at the time of the commission of the offense.

36 (B) A felony offense committed for the purposes of intimidating
37 or interfering with any other person's free exercise or enjoyment
38 of a right secured to him or her by the Constitution or laws of this
39 state or by the Constitution or laws of the United States and because
40 of the other person's race, color, religion, ancestry, national origin,

1 disability, gender, or sexual orientation, or because the minor
2 perceived that the other person had one or more of those
3 characteristics, as described in Title 11.6 (commencing with
4 Section 422.55) of Part 1 of the Penal Code.

5 (C) The offense was committed for the benefit of, at the direction
6 of, or in association with any criminal street gang as prohibited by
7 Section 186.22 of the Penal Code.

8 (4) In any case in which the district attorney or other appropriate
9 prosecuting officer has filed an accusatory pleading against a minor
10 in a court of criminal jurisdiction pursuant to this subdivision, the
11 case shall then proceed according to the laws applicable to a
12 criminal case. In conjunction with the preliminary hearing as
13 provided in Section 738 of the Penal Code, the magistrate shall
14 make a finding that reasonable cause exists to believe that the
15 minor comes within this subdivision. If reasonable cause is not
16 established, the criminal court shall transfer the case to the juvenile
17 court having jurisdiction over the matter.

18 (5) For an offense for which the prosecutor may file the
19 accusatory pleading in a court of criminal jurisdiction pursuant to
20 this subdivision, but elects instead to file a petition in the juvenile
21 court, if the minor is subsequently found to be a person described
22 in subdivision (a) of Section 602, the minor shall be committed to
23 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
24 or secure juvenile home pursuant to Section 730, or in any
25 institution operated by the Department of Corrections and
26 Rehabilitation, Division of Juvenile Facilities.

27 (6) If, pursuant to this subdivision, the minor is found to be not
28 a fit and proper subject for juvenile court treatment and is tried in
29 a court of criminal jurisdiction and found guilty by the trier of fact,
30 the judge may commit the minor to the Department of Corrections
31 and Rehabilitation, Division of Juvenile Facilities, in lieu of
32 sentencing the minor to the state prison, unless the limitations
33 specified in Section 1732.6 apply.

34 (e) A report submitted by a probation officer pursuant to this
35 section regarding the behavioral patterns and social history of the
36 minor being considered for a determination of unfitness shall
37 include any written or oral statement offered by the victim, the
38 victim's parent or guardian if the victim is a minor, or if the victim
39 has died, the victim's next of kin, as authorized by subdivision (b)
40 of Section 656.2. Victims' statements shall be considered by the

1 court to the extent they are relevant to the court's determination
2 of unfitness.

3 SEC. 5. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

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